

# United States District Court

DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA

V.

ANDREW JAMES SMITH

## CRIMINAL COMPLAINT

CASE NUMBER: 3:07cr 113

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about November 22, 2007, in Cass County, in the        District of North Dakota defendant(s) did, (Track Statutory Language of Offense)

while on an aircraft in the special aircraft jurisdiction of the United States, did intimidate a flight crew member or flight attendant and interfered with the performance of the duties of the flight crew member or flight attendant or lessened the flight crew member or flight attendant to perform those duties,

in violation of Title 49 United States Code, Section(s) 46504.

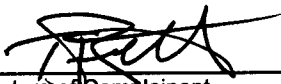
I further state that I am a(n) Special Agent, and that this complaint is based on the following  
Official Title

facts:

See attached Affidavit

Continued on the attached sheet and made a part hereof:

☒ Yes ☐ No

  
Signature of Complainant  
Troy A. Breitenbach, Special Agent  
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,

November 23, 2007  
Date

at Fargo, ND  
City and State

Karen K. Klein  
United States Magistrate Judge  
Name & Title of Judicial Officer

  
Signature of Judicial Officer

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NORTH DAKOTA**

**AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT**

I, Troy A. Breitenbach, ("your affiant"), a Special Agent (SA) with the Federal Bureau of Investigation (FBI), Fargo, North Dakota, being duly sworn, depose and state as follows to wit:

1. Your affiant is employed as a Special Agent with the Federal Bureau of Investigation (FBI) and has been so employed since February, 2004. I am currently assigned to the Minneapolis Division, Fargo Resident Agency, where I am responsible for investigating federal violations. While being trained as a Special Agent of the FBI at the FBI Academy located in Quantico, Virginia, I have gained additional experience through training in seminars, classes, and daily work related to conducting investigations.

2. The information contained in this affidavit is based on my personal knowledge, information provided to me by other law enforcement officials, and information from records checks conducted by law enforcement officials. As this affidavit is being submitted for the limited purpose of filing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause for the issuance of the requested arrest warrant. However, even though your affiant has not included every fact known to date in this investigation, your affiant does not believe anything has been omitted which would reduce or vitiate the probable cause set forth herein.

3. This application is in support of a Criminal Complaint concerning ANDREW JAMES SMITH, an adult, whom your affiant asserts was on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interfered with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, or attempts or conspires to do such an act, in violation of Title 49, United States Code, Section 46504.

**RELEVANT STATUTES**

4. As is relevant here, Title 49, United States Code Section 46504 states:

An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, or attempts or conspires to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life.

### **BACKGROUND**

5. The information provided in this affidavit is the summation of an investigation conducted by Supervisory Special Resident Agent (SSRA) Thomas J. Jones, as well as your affiant.

6. On November 22, 2007, your affiant initially received information that a United Airlines flight was being diverted to the Hector International Airport, Fargo, North Dakota, after a passenger onboard tried to breach the cockpit of the airplane. The passenger was later identified as ANDREW JAMES SMITH, date of birth 04/11/1978.

7. Upon arriving at the scene, your affiant interviewed three (3) flight attendants working United Airlines Flight 291, which departed from Washington Dulles Airport, and had a final destination of Sacramento, California. Prior to leaving the gate in Washington, the gate agent informed the flight attendants that SMITH appeared to be acting in a strange manner. One of the flight attendant's stated that SMITH interrupted them while they were having their identification checked prior to boarding the aircraft. SMITH advised them that he was going to Sacramento because his girlfriend was having a baby. SMITH was described as acting very nervous.

8. While the passengers boarded the aircraft, SMITH was originally assigned seat 21F, but was relocated to row 20, and had the row to himself. Row 20 is toward the back of the plane. One flight attendant who assisted SMITH with his boarding pass stated that it appeared SMITH couldn't understand his boarding pass.

9. SMITH was described as being nervous and emotional while on board. He continued to bother the flight attendants by constantly pressing the call button, walking to the back galley, and was described as acting in a strange manner. One flight attendant stated that on one occasion, SMITH came to the back galley and stated something to the effect of "We're all gonna die. We're gonna go to hell." SMITH also appeared to look at the exit door in the back galley. The flight attendant told him not to worry about the door, and asked him to take his seat. On one other occasion, a flight attendant stated that SMITH had gone to the bathroom during the flight and took his clothes off. A flight attendant spoke to some passengers that were seated around SMITH, and asked them if they could assist with SMITH if needed. The flight attendants retrieved the security kit that they have aboard the aircraft. One of the flight attendants showed one of the passengers how to use the restraints. The situation was discussed with the pilots, and the decision was made to continue the flight. The flight attendants tried to keep SMITH calm throughout the flight.

10. The flight attendants stated that SMITH suddenly got up from his seat and started running towards the front of the plane. One flight attendant heard passengers screaming something to the effect of "He's running to the cockpit door." One of the flight attendants who was located in the front galley, just outside the cockpit, saw SMITH running towards the front of the plane and pulled the beverage cart out to block the walkway and the cockpit door. The other flight attendant, who was also toward the front of the plane, "body blocked" SMITH. SMITH was restrained by two (2) flight attendants, along with three (3) or four (4) passengers. The

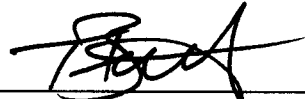
captain was notified immediately and diverted the flight to the Hector International Airport. SMITH was taken into custody and removed from the airplane.

11. The pilots of the aircraft were also interviewed. The pilots stated that they heard "banging" on the crew door that sounded like a "fist fight." Due to the situation and belief that the passenger was a danger, the captain declared a Level 4 emergency, which the captain advised is their highest rating, and located the nearest airport (Hector International, Fargo, North Dakota), and landed the plane.

### CONCLUSION

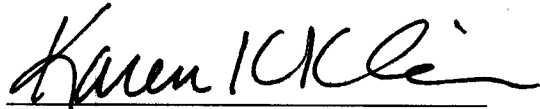
12. Based upon the above information, your affiant asserts that this affidavit establishes probable cause to believe that ANDREW JAMES SMITH, date of birth [REDACTED], whom your affiant asserts was on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interfered with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, in violation of Title 49, United States Code, Section 46504.

13. In consideration of the foregoing, I respectfully request that this Court issue an arrest warrant for ANDREW JAMES SMITH, date of birth 04/[REDACTED]



Troy A. Breitenbach  
Special Agent  
Federal Bureau of Investigation

SUBSCRIBED TO AND SWORN TO  
BEFORE ME THIS 23rd DAY OF  
NOVEMBER, 2007



United States Magistrate Judge  
District of North Dakota